



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,339	01/14/2004	Lee McDonald	20040012.ORI	3486
23595	7590	12/13/2005	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			ALI, SHUMAYA B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/757,339

Applicant(s)

MCDONALD, LEE

Examiner

Shumaya B. Ali

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: detailed action.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 provisionally rejected under the judicially created doctrine of double patenting over claims 1-10 of copending US Patent No. 6,595,207B1. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

2. The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

- As to claims 1,4,15: "an elongated tube" is recited under "an elongated tubular bottom" of claims 1,10 and "a support for the diffuser" is broadly recited under claims 1 of '207B1
- As to claims 2,3,6,14,16-18,20 are broadly recited under "adapted to be secured" of claims 1 and 10.
- Claims 7,10 are recited under claims 1a and 7 of '207B1
- Claims 9 is recited under claims 3 and 4 of '207B1

Art Unit: 3743

- Claim 12 is recited under claim 10 of '207B1
- Claims 5,13,19 are recited under claim 2 of '207B1

Claims 1-20 provisionally rejected under the judicially created doctrine of double patenting over claims 1-19 of copending US Patent Application Publication 2001/0042547A1. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

3. The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

- Claims 1,9,12,15 are recited under claims 1,17, and 19 of '547A1
- Claims 2,3,6,14,16-20 are recited under claims 1 and 17 of '547A1
- Claims 7-11 are recited under claims 10-12 and 14-16 of '547A1
- Claims 5,13,19 are recited under claims 1,2,9,17, and 18 of '547A1

Claims 1-20 provisionally rejected under the judicially created doctrine of double patenting over claims 1-10 of copending US Patent Application Publication No. 2004/0094160 A1. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

4. The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

- Claims 1,9,12,15 are recited under claims 1-4 and 6 of '160A1
- Claims 2,3,6,14,16-20 are recited under claims 1 d of '160A1
- Claims 7-11 are recited under claims 3-10 of '160A1
- Claims 5,13,19 are recited under claims 2,5 and 8 of '160A1

Art Unit: 3743

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

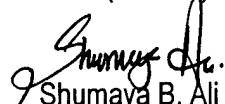
Conclusion

3. Examiner has done a through search and indicated as many patents/pending applications that are subject to Double Patenting rejections. However due to the time limit given to examine each application, the Examiner might have overlooked other pending applications or patents that would be considered for Double Patenting rejection. Therefore, the applicant is requested to inform the Examiner to such corresponding pending application(s) and/or Patent(s) and file Terminal Disclaimer accordantly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Shumaya B. Ali** whose telephone number is **571-272-6088**. The examiner can normally be reached on M-F 8:30 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Henry Bennett** can be reached on **571-272-4791**. The fax phone number for the organization where this application or proceeding is assigned is 571-273-6088.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shumaya B. Ali
Examiner
Art Unit 3743
12/11/05


Henry Bennett
Supervisory Patent Examiner